Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local	)	
Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation	)	
Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

FURTHER NOTICE OF PROPOSED RULEMAKING

COMMENTS OF
ALEXICON TELECOMMUNICATIONS CONSULTING

Alexicon Telecommunications Consulting ("Alexicon") hereby submits its Comments to the Federal Communications Commission ("FCC" or "Commission") in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM," or "Proposal").[1] In this Further Notice of Proposed Rulemaking, the Commission seeks comment on issues related to Universal Service Fund and Intercarrier Compensation Reform adopted concurrently with the FNPRM.[2]

GENERAL

Alexicon provides professional management, financial and regulatory services to a variety of small rate-of-return Incumbent Local Exchange Carriers ("ILECs")[3] who serve diverse geographical areas characterized by rural, insular or Native American Tribal Lands. These ILECs, similar to most other small rate-of-return regulated ILECs, currently provide a wide range of technologically advanced services to their customers. These companies, through participation in various State and Federal high cost funding programs, and with their continued investment in network infrastructure, are providing customers in rural, insular and Tribal areas with services equal to or greater than urban areas, and at comparable pricing. Furthermore, these ILECs have been committed to providing their customers with innovative solutions, by adapting technologies that fit rural America, including Broadband and IP-enabled services. The stated and implied purposes of, and the issues raised in the FNPRM, are of particular import to our clients who are all highly dependent upon Universal Service Funding to recover the higher cost of providing services to their customers, compared to larger, more urban service providers.

Alexicon's clients range in geographic size from single wire-center companies to larger providers with multiple wire-centers. All of Alexicon's clients are dependent upon the flow of funds from the Federal Universal Service Fund ("USF") to assist in serving their

[1] Adopted October 27, 2011 and Released November 18, 2011.

[2] Report and Order and Further Notice of Proposed Rulemaking In the Matter of Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208, released November 18, 2011. (*ICC/USF Order*)

[3] As defined by the Telecommunications Act of 1996 ("Act").

rural customers at reasonable rates for local exchange and access services. Most of Alexicon's client companies are also contributors to the USF fund.[4] Furthermore, all provide their consumers with an assortment of modern communications services, including (but not limited to) voice, broadband, and Internet access availability. These companies generate a large part of their revenues from intercarrier charges, mostly in connection with switched access and special access charges paid by interconnecting interexchange carriers and wireless providers. These charges are classified as either interstate (usually rates charged based upon individual tariffs or as filed by the National Exchange Carrier Association ["NECA"]), or intrastate (rates based upon various state-specific tariff(s)) in nature.

EXECUTIVE SUMMARY

Alexicon appreciates the effort and sheer force of will required to generate the *ICC/USF Order*. The Commission undertook a herculean task and emerged with a detailed tome that in many ways turns the telecommunications industry upside down. As with any pronouncement of this sort, the Commission's magnum opus will not please all stakeholders involved, and may very well not survive in its present state. However, it will be up to the Commission and all interested parties to ensure that the next steps in the evolution of Universal Service are done in an orderly fashion and in such a way so as to ensure the future of broadband services in the United States.

Alexicon will offer in these comments a look at the potentially disastrous impacts of the *ICC/USF Order*, especially when examined in the light of some of the more draconian measures explored in the FNPRM. Alexicon has performed an exhaustive analysis of the financial impacts of the *ICC/USF Order* and the companion FNPRM on rate-of-return (RoR) regulated incumbent rural local exchange carriers (RLECs), and has concluded that, if the Commission proceeds further as outlined in the FNPRM, the impacts could be disastrous to the goal of bringing quality broadband services to rural areas.

The Commission's decision to eliminate support in areas where an unsubsidized carrier, or group of carriers, overlaps 100% of the ILEC territory is problematic, at best. The proposal to extend

[4] Consistent with Section 254 (d), 47 U.S.C. 151, with the exception of any ILEC whose contribution(s) qualifies for the de minimus exemption.

this policy to areas with less than 100% overlap is illogical, and should be rejected. Alexicon will also comment upon the methodology to determine whether an incumbent's service area is indeed 100% overlapped by an unsubsidized competitor, or competitors – one that which by necessity must be heavily influenced by the state commission or other state or local regulatory authority.

In the ICC/USF Order, the Commission determined, prematurely according to some, that it should limit the amount of certain operating and capital expenses recovered through the high cost loop support and interstate common line support mechanisms. In the FNPRM, the Commission requests comment on how to implement its decision to adopt these caps effective July 1, 2012. Alexicon will provide comment on the mechanism in general, and, as stated above, will present evidence as to the negative impacts the Commission's decision in this regard could have on the provision and expansion of broadband services in rural areas.

The Commission's decisions and proposals have the potential for far reaching negative impacts on Tribes and Tribally-owned carriers. The Commission must ensure its proposals recognize the proper government-to-government relationship that exists with the Tribes, and must also recognize the fragile state of broadband deployment in many of these areas. The Commission must make sure the steps taken in this proceeding, and in the future, nurture the spread of broadband capable services in Tribal Areas and not halt the spread of these vital networks.

I. THE OVERALL IMPACT OF THE ICC/USF REFORM ORDER

Alexicon has performed a detailed and thorough review, to the extent possible, of the financial impacts on RLECs of the *ICC/USF Order*. In addition, Alexicon has generated a summary of the likely national impact on RoR carriers as a whole. This analysis is included as Attachment A to these comments.[5]

By far the biggest impact is caused by the Commission's adoption of limitations to capital and operating expenses that are recoverable through HCLS.[6] In addition, the changes to the existing corporate operations expense cap, and the extension of this cap to the ICLS fund, have significant impacts on RLECs.

Alexicon recognizes that the Commission's decisions and proposals surrounding the limitation on capital and operating expenses only impacts the recovery from HCLS and, presumably, ICLS. However, such prudently incurred expenses, no matter what the Commission's final limitation model says, must be recovered, or companies risk falling short of covering regulated revenue requirements. This has little to do with "entitlement" as the Commission references in its Order[7] but instead has to do with carriers relying on a set of rules in effect at the time that critical decisions were made to incur loans, incur costs, and deploy infrastructure. The issue facing RoR RLECs will soon be reconciling the apparent limitation on cost recovery brought about by the Commission's decisions and proposals related to intercarrier compensation, and the immediate threat of reduced, sometimes significantly, support from the HCLS and ICLS funds.

The end result of reduced support revenues provided to RLECs is a threat to the provision and advancement of services, both voice and broadband, to rural areas. Regardless of whether the Commission is limiting high cost fund recovery of certain expenditures, or an overall reduction

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[5] Attachment A quantifies the national impact of over 700 RoR cost companies to HCLS and ICLS using a 90th percentile of quantile regression and the Commission's new rules for ICLS modifications. In addition this summary uses an NACPL of approximately $505/access line pending clarification from the Commission what the NACPL should be

[6] While the Commission concluded that similar limitations should be developed for ICLS, there was not sufficient data in the ICC/USF Order or FNPRM upon which to estimate the financial impact.

[7] ICC/USF Order, para 221

or limitation cost recovery, the customer will pay in the end – either in the form of higher rates, reduced services, reduced service quality, or all of the above.

II. ELIMINATING SUPPORT FOR AREAS WITH AN UNSUBSIDIZED COMPETITOR

In the ICC/USF Order, the Commission adopts a new policy to phase-out high cost support received by incumbents in areas where an unsubsidized competitor, or competitors, covers 100% of the incumbent's study area.[8] In the FNPRM, the Commission requests comment on 1) the proper method for determining whether a specific study area is 100% overlapped by an unsubsidized competitor(s), and 2) whether support should be reduced in cases where the incumbent study area is covered less than 100% by unsubsidized competition.[9]

While Alexicon has concerns regarding the Commission's decision to eliminate support in areas with 100% overlap, especially in light of the fact that it left unaddressed issues surrounding RLECs' continuing carrier of last resort (COLR) responsibilities[10], comments will be offered on how to proceed with this decision. Alexicon will first offer comments on the process for determining whether an RLEC's study area is 100% overlapped by an unsubsidized competitor, or competitors, and then will comment on the Commission's proposal to reduce support in cases where the unsubsidized overlap is less than 100%.

A. Process for Identifying Areas of 100% Overlap

The Commission seeks comment on the proposed methodology for determining whether and to what extent competitive overlap exists and how the affected ETC can challenge the accuracy of the purported overlap. Also discussed is the Commission Staff's effort to identify such areas through TeleAtlas Wire Center Boundaries and National Broadband Map data. Alexicon suggests that the only way the process can work for determining whether 100% competitor

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[8] *ICC/USF Order*, at 281
[9] FNPRM Section XVII. D.
[10] See Petition for Reconsideration and Clarification filed by NECA, OPASTCO, and WTA on December 29, 2011 at 18-19 (*Rural Association PFR*)

overlap exists is through a petition in front of the relevant state commission or other state/local government authority. While the data utilized by the Commission's Staff is useful for determining the estimated scope of the Commission's decision, it in no way, shape, or form should be used as a final determinant. Instead, the process should hinge on a proceeding in front of the regulatory body closest to the situation.

The rural association groups outlined a process whereby a petition is filed by an unsubsidized competitor showing that 1) it is a state-certified carrier or ETC; 2) it can deliver both broadband and quality voice services to 100% of the households in the RLEC's area, and in a manner comparable to the RLEC; 3) it offers each of these services on a stand-alone basis at rates that are reasonably comparable to those offered by the RLEC; and 4) it neither receives high-cost support of any kind nor cross-subsidizes its operations in the specific area for which it is making its request and showing.[11] Alexicon supports this outline of a process, and stresses that the petition filing must be made at the state level.

Several state commissions and the national consumer advocate association agree in theory with the above process. In reference to a question posed in the August 3, 2011 Public Notice regarding the role of the states in administering a process to determine which areas are served by an unsubsidized competitor[12], the New York Public Service Commission stated "each of these functions builds on the local expertise of state commissions and would allow their knowledge to inform the process and increase overall efficiency of the program."[13] The National Association of State Utility Consumer Advocates (NASUCA) added "that if such a process is adopted, the states should administer it."[14] While Alexicon believes the Commission can and should provide some guidelines around how this process will work, it should be in large part left to the states and existing procedural rules to handle.

[11] Comments of NECA, NTCA, OPASTCO, and WTA (rural associations), April 28 2011at 52-53
[12] See August 3, 2011 Public Notice at 7
[13] New York PSC August 24, 2011 Comments at 7
[14] NASUCA August 24, 2011 Comments at 90

Finally, Alexicon strongly believes that the "list of companies for which there is a 100 percent overlap" to be published by the Wireline Competition Bureau (WCB)[15] should be treated, at most, as a guide by which unsubsidized competitors can determine if petitions may be filed at the relevant state commission(s). This list, to be based on the process adopted by the Commission, and generated presumably using data available to the WCB, should in no way supplant or prejudice any resulting state commission investigations into whether a supposed unsubsidized competitor meets the criteria for 100% coverage of an RLEC's area. This issue is just too important for anything but a full and complete determination by a state commission.

B. Adjusting Support Levels in Areas with Less than 100% Overlap

The Commission requests comment on whether and how support should be adjusted in areas where there is less than 100% competitive overlap.[16] This proposal should not be adopted, as it in essence assumes COLR and ETC responsibilities have been eliminated, which clearly is not the case.

In order for high cost support to be "adjusted" in cases when less than 100% of an RLEC's area is overlapped by an unsubsidized competitor, the Commission must assume that COLR and ETC responsibilities no longer exist. The COLR and ETC mandates exist in order to ensure service is made available to all who request such service, regardless of where the customer lives or how much it costs to serve the customer. Universal service support exists, among other things, to provide additional funding to COLRs and ETCs where providing service to all within a given area would not be economically feasible, given the legal mandate that rates are reasonably comparable. If a competitor serves less than 100% of the RLEC's area, it is quite likely that the competitor's chosen service area consists of the lowest cost customers, which thus leaves the higher cost customers as the sole responsibility of the COLR. Unless the Commission wishes to disaggregate universal service support, where it is quite likely that demand for high cost support will increase as the higher costs are left to be recovered over fewer customers[17], this type of policy will not work and should be rejected.

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[15] FNPRM at 1070
[16] FNPRM at 1073
[17] See also Rural Association April 18, 2011 Comments at 51

Even if one accepts the premise underlying the Commission's decision to eliminate support, over time, in areas where a competitor, or competitors, completely overlaps an RLEC service area (namely, that if the competition can offer services comparable to those offered by the incumbent without need for high-cost support then the area must be "economic" to serve), this rationale cannot be extended to areas with less than 100% overlap. In addition, there are potential issues in areas with 100% overlap in that there is still only one carrier of last resort, and if the competition exits the market, it can no longer be assumed that the market is "economic" to serve and no longer requires high cost support. The Commission must then decide how to reinstate support to the remaining carrier. This situation is only exacerbated in situations of less than 100% overlap – the COLR must still exist and offer service to all who request it, but must then face an unknown level of support for its COLR service, must more than likely remain under more onerous regulation than the competitor, and is therefore more likely to have prices constrained. In the end, even if the incumbent is allowed to charge market-based prices, the customers in the non-overlapping areas will be made to suffer higher rates for (hopefully) comparable service to that received by other customers in the same study area.

The Commission requests comment on whether, in cases where unsubsidized competition covers less that 100% of the incumbent's area, "there should be a rebuttable presumption that costs are divided pro rata among access lines, and allocated to the census block in which the access line is located, so that absent an appropriate showing the recipient would receive the same support amounts per line, but only for those lines that fall outside the area of overlap."[18] This nonsensical revision to established policy should be rejected. Specifically, the Commission has long recognized that costs to serve customers within the same service area vary significantly, based, among other things, loop length and density.[19] To now state, based on scant evidence provided by the cable industry[20], that costs can now be allocated on a pro rata basis is illogical, and implementation of any policy based on this theory would further threaten the attainment of national broadband goals in rural areas.

[18] FNPRM at 1076
[19] See 47 CFR 54.315 – Disaggregation and targeting of support by rural incumbent local exchange carriers.
[20] See e.g., FNPRM at 1076 and footnote 2203

III. LIMITS ON REIMBURSABLE CAPITAL AND OPERATING COSTS FOR RATE-OF-RETURN CARRIERS

The Commission adopted a methodology whereby limits are placed on certain capital and operating expenses (Capex and Opex, respectively) included in the recovery from the legacy high cost loop support (HCLS) mechanism.[21] This methodology is based on a statistical analysis, using a quantile regression technique, that results in a range of "allowable" levels of certain capex and opex line items that feed in to the federal HCLS calculation. It is important to note that the Commission adopted this limitation to be effective July 1, 2012 without having decided upon the final methodology. This is the subject of at least one petition for reconsideration[22], and will likely be one, of many subjects, brought up for appeal at the 10th Circuit Court of Appeals consolidated docket. In Alexicon's view, this is the most financially harmful aspect of the ICC/USF Order, and the Commission must now work to revise this methodology if it is resolved to go down this path.

In the FNPRM, the Commission requests comments on the methodology for determining the capex and opex limits, and how the methodology will apply to ICLS. The FCC also published Appendix H, which contains details on the quantile regression technique proposed to be used, upon which comment is also sought.

A. The Commission's Capex and Opex Limitation Methodology is Fundamentally Flawed

The quantile regression analysis upon which the Commission bases its capex/opex limitation is fundamentally flawed in several ways. The most serious of these flaws results in a bias against certain technologies and network architectures, and most notably, punishes companies, and by extension their customers, for building modern networks capable of providing broadband services with the capacity to last well into the future. In addition, the predictive value of the

[21] *ICC/USF Order*, Section VII D. 3
[22] See *Rural Association PFR* at 9

quantile regression analysis is lacking, which directly impacts the limits being placed on recovery of certain expenses and investments via the HCLS fund.

1. The Capex and Opex Limits are Biased Against Progressive Investment in Broadband Technology

The quantile regression analysis results in limits placed on several steps in the HCLS algorithm, including Category 1 Cable and Wire Facilities (CWF), which consists of local loop outside plant investment, and Category 4.13 Central Office Equipment (COE), which consists of local loop central office investment.[23] The quantile regression analysis takes into consideration data from "nearly all the rural rate-of-return cost carriers for each algorithm step."[24] This universe of data includes companies with wildly differing business, operating, and investment plans. As a result, the limitations on Category 1 CWF and Category 4.13 COE are based on companies who, for various reasons, did not invest as heavily in robust broadband networks as others. Thus, the companies that 1) build networks in compliance with RUS standards[25], 2) invest in infrastructure designed to bring broadband capable services to all Americans, in furtherance of the National Broadband Plan, and 3) design "future-proof" broadband capable networks are in essence being punished by virtue of the HCLS recovery capping mechanism including companies' data representing little or no robust broadband investment. The philosophy of "build it right the first time"[26] is being severely undermined via the Commission's capex and opex limitation proposal.

In addition to being biased against companies that progressively invested in robust broadband capable networks, the capex/opex limitations punish certain types of legitimate network configurations. For example, companies that deployed a host-concentrator network would have, as compared to companies that deployed a different network configuration, higher Category 1 CWF and Category 4.13 COE ratios, which feed directly into the HCLS algorithm. There are many legitimate reasons for deploying these types of networks, including cost savings, which are being punished by virtue of the capex/opex limitation methodology.

[23] See *ICC/USF Order*, Appendix H
[24] Appendix H at 4
[25] See in general "About Telecom Infrastructure Loans" at http://www.rurdev.usda.gov/utp_infrastructure.html
[26] See Rural Utilities Service July 29, 2011 Ex Parte filing

2. The Quantile Regression Analysis Possesses Poor Predictive Capability

Alexicon has spent considerable time and energy analyzing the Commission's proposed quantile regression method for identifying limits on HCLS-reimbursable opex and capex amounts. While Alexicon still has a substantial amount of analysis left to perform, one thing is clear – the Commission's quantile regression model exhibits poor predictive capabilities. The value of any statistical analysis, such as what the Commission has attempted to do, lies in its predictive capabilities. In the instant case, the Commission is attempting to predict the values of several dependent variables, the HCLS algorithm steps, by applying a series of independent variables and then grouping the results in various strata. The end result is a conclusion that any study area with costs in excess of 90% of its peers incurred those costs inefficiently. Thus, the Commission's conclusion that certain costs in certain study areas must be capped as to HCLS recovery hinges on the quality of its predictive model. Alexicon believes the quality of this model is sorely lacking, and must therefore be rejected.

According to Alexicon's analysis, only the loops and housing unit independent variables have a 99% or greater probability of correlation with each cost, or algorithm, step. In fact, five out of eleven algorithm steps are capped exclusively based on the loops and/or housing units variables.[27] Thus, it can be concluded that due to the existence of very few meaningful independent demographic variables that have a reliable correlation to the changes in cost, the Commission's quantile regression model is relying on very sparse data in limiting recoverable costs, and thus is a poor predictive methodology.

B. The Application of Any Capex and Opex Limitations Should Be Applied on a Prospective Basis Only

The Commission proposes to apply the capex/opex limitation methodology effective 7/1/2012, which would in effect place limits on HCLS recovery of expenditures already incurred by RLECs. Although there is some confusion on this issue[28], Alexicon assumes the Commission intends to limit HCLS revenues to be received on July 1, 2012. This means that RLEC

[27] Steps AS7, AS8, AS13, AS15, AS16, and AS17

[28] *See e.g.,* Petition for Reconsideration and Clarification filed by Accipiter Communications, Inc. on December 29, 2011.

investments made prior to the effective date of the order, and prudently incurred under the rules in effect at the time, will now be limited as to recovery from the HCLS. If this is indeed the Commission's intention, then this result is substantially similar to retroactive ratemaking and, like that practice, should not be allowed to occur.

In essence, retroactive ratemaking can be defined as the setting of rates which permit a company to recover past losses or which require it to refund past excess profits collected under rates that did not perfectly match expenses plus return at the time rates were set. It is well known that this practice is not acceptable[29], and in fact negates the filed rate doctrine that allows a utility to charge properly authorized, tariffed rates without fear of subsequent revision.

While it could be argued that the Commission is not exactly engaging in retroactive rate making[30] in limiting HCLS recovery of certain levels of opex and capex already incurred, the contemplated limitations impact expenses incurred and investments made in 2010.[31] These expenditures were made under current rules and recovery methodologies, and therefore the incurring companies rightfully expected to receive a certain level of HCLS as a result. Furthermore, if a company theoretically had local rates established using a 2010 test year, those rates would be based on the expenses and investment measured consistently with the 2010 test year, and would not have taken into account the Commission's after-the-fact meddling with HCLS recovery. In this hypothetical situation, it is also likely that the level of HCLS, which is typically used to offset intrastate revenue requirements, would have been established without regard to the retrofitting that results from the Commission's decision to limit opex and capex recovery.

[29] See, e.g., *Appeal of Pennichuck Water Works, Inc.,* 120 N.H. 562, 566 (1980) "[T]he vehicles by which utility rates are set, the tariffs or rate schedules required to be filed with the PUC…do not simply define the terms of the contractual relationship between a utility and its customers. They have the force and effect of law and bind both the utility and its customers. As such, the customers of a utility have a right to rely on the rates which are in effect at the time that they consume the services provided by the utility, at least until such time as the utility applies for a change. Once customers consume a unit of those services, they are legally obligated to pay for it and in that sense the transaction has been completed and the charges are set in accordance with the rates then in effect and on file with the PUC or with rates later approved by the PUC based on a pending request for a change. If the PUC were to allow a rate increase to take effect applicable to services rendered at any time prior to the date the petition for the rate increase was filed, *it would be retroactively altering the law and the established contractual agreement between the parties."*

[30] Technically speaking , no rates are as yet directly involved

[31] HCLS to be received effective 7/1/2012 is based on investment as of 12/31/2010 and expenses paid during 2010, notwithstanding quarterly updates.

Alexicon recommends that if the Commission adopt any HCLS recovery limitations based on the capex/opex quantile regression methodology that it be done on a prospective basis only. This means that the earliest effective date for HCLS would be for support to be received on July 1, 2014, which is calculated using 2012 costs.

C. Adopting a Higher Percentile Threshold

A key part of the Commission's capex/opex limitation methodology is the decision to apply the regression-derived capex and opex limits at the 90th percentile of costs as compared to similarly situated companies.[32] This means that certain costs incurred by RLECs associated with the HCLS calculation are limited to the extent the costs exceed those incurred by 90 percent of similarly-situated companies. The Commission seeks comment on whether the 90th percentile is the appropriate dividing line.

The only supporting statement made in the FNPRM or in Appendix H regarding the proposed adoption of the 90th percentile is "[t]his methodology uses the 90th percentile because carriers with costs exceeding 90 percent of their similarly-situated peers may raise questions about the prudence of such expenditures."[33] Alexicon can find no evidence on the record to support the statement that "carriers with costs exceeding 90 percent of their similarly-situated peers may raise questions." As the Commission fully realizes, another, presumably arbitrary, threshold may be reasonable, such as 85 or 95.[34]

Alexicon recommends the Commission proceed with caution with the selection of a reasonable quantile threshold. The proposal to limit capex and opex as to HCLS recovery is likely to receive substantial criticism, especially if it is adopted as proposed. One reasonable approach would be to supplement the record with respect to the quantile threshold, and especially strengthen the Commission's tentative conclusion that the 90th percentile is the correct threshold. If the Commission determines to move forward with its quantile regression-based HCLS-

[32] FNPRM at 1080
[33] Appendix H at 12
[34] *Id.*

supported expense limitations, then [at a minimum] it should adopt the 95th percentile so as to lessen the impact on affected carriers.

Alexicon further questions the Commission's statement that RoR carrier costs that exceed, by a certain threshold, costs incurred by similarly-situated peers may raise questions. Granted, the HCLS program should not be expected to support imprudently incurred expenses or investment; however, limiting recovery of expenses in this way, without a finding that an expense incurred or investment made by a specific RoR carrier is imprudent clearly does not comport with traditional ratemaking policy. For example, if a traditionally-regulated RoR carrier wishes to raise local rates, it must request permission to do so from the state commission. After investigating the RoR carrier's revenue requirement, the state commission will determine whether the request is reasonable or not. Typically, the state commission will make certain adjustments to the RoR carrier's revenue requirements to ensure the resulting local rates are just and reasonable, and are equitable to both the carrier and the customer. In some cases, the state commission will determine that certain expenses or investments embedded in the requesting carrier's revenue requirement should not be recovered through local rates, but this determination is made after a thorough examination is conducted and all interested parties have provided evidence and arguments for and against the adjustments. The Commission's proposal in the *ICC/USF Order* and accompanying FNPRM to limit recovery via HCLS of certain expenses seems to be a short-cut where short-cuts should not be taken. In essence, the Commission is attempting to adopt a "rate case proxy model" which will likely not work as intended, and will result in adverse consequences to the Commission's stated broadband goals.

D. The Capex and Opex Limitations Should Not Be Applied to ICLS

In the *ICC/USF Order*, the Commission concludes that the capex and opex limitation methodology adopted for HCLS should also be applied to ICLS.[35] As the Commission admits, the methodology upon which comment is sought, and which is the subject of Appendix H to the *ICC/USF Order*, was not developed with ICLS in mind and will therefore need to be adapted to

[35] *ICC/USF Order* at 225

work with ICLS.[36] Alexicon will demonstrate below why the capex and opex limitation methodology cannot and should not be applied to ICLS.

As the Commission is aware, ICLS results from the limited ability of RoR carriers to recover interstate allocated common line revenue requirement through rates.[37] The ICLS program differs from the HCLS program in this important aspect – the HCLS program was designed to shift costs that would normally be allocated to the intrastate jurisdiction by operation of the Commission's rules (and in large part recovered through local rates) to the interstate jurisdiction and recovered outside interstate access rates through a separately-funded program. As a result, if and when the Commission revises HCLS rules, it is simply revising the support-based recovery of RoR carriers' total revenue requirement. In the case of ICLS, the Commission's proposal would limit *recovery* of certain expenses and capital expenditures, but would not address the resultant impacts on overall interstate common line revenue requirements. In other words, the Commission cannot simply reduce ICLS without leaving a significant hole in RLEC interstate common line revenue requirement recovery. In the case of reduced HCLS, assuming costs remain equal and the reduction is due to Commission rule changes, the recovery is shifted to the intrastate jurisdiction and ultimately to local customers. There is no similar recovery for reductions in ICLS such as contemplated by the Commission – the amount of prudently-incurred expenses and investment would simply "disappear." This clearly is not a reasonable result.

At most, the Commission should heed the advice of the Rural Associations and "state instead that it will examine the potential application of the new caps to ICLS, subject to adequate notice and comment."[38] While Alexicon believes the Commission cannot apply the capex/opex limitation methodology to ICLS, there should at the very least be more examination of the surrounding issues in addition to those raised above if the Commission decides to move forward. Furthermore, companies have been unable to analyze the impact of the capex/opex limitation on ICLS due to the lack of any methodology, other than vague proposals made in the FNPRM.[39] Yet, the Commission expects the limitations to impact ICLS effective July 1, 2012, and no party

[36] *Id.*
[37] *FNPRM* at 1086
[38] *Rural Associations PFR* at 11
[39] See FNPRM at 1086-1087

has any idea as to the financial impact. Clearly, the Commission must put a halt to this proposal, or at the very least slow it down until and full and complete record is established.

E. The Capex/Opex Limitation Should Not Affect Safety Valve Support

While not specifically stated, the Commission's proposal to limit recovery of certain capex and opex via HCLS would have an impact on Safety Valve Support (SVS). Section 54.305 of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of support for which the exchanges were eligible prior to their transfer. If a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's High Cost Model (HCM) for non-rural carriers, the loops of the acquired exchange receive the same per-line support as calculated at the time of the transfer under the HCM component.

> This formula applies regardless of the rural carrier's cost characteristics or the support the rural carrier purchasing the exchange may receive for any other exchanges. High Cost components subject to these limitations include non-rural forward-looking support (High Cost Model), Interim Hold Harmless support for non-rural carriers, rural High Cost Loop support, and Local Switching Support. Under FCC rules, to the extent that a carrier acquires exchanges receiving any of these forms of support, the acquiring carrier will receive the same per-line levels of support for which the acquired exchanges were eligible prior to their transfer.
>
> Because of concerns related to, among other things, the quality of service in rural areas and the incentive for investment in rural infrastructure, the Rural Task Force (RTF) recommended, and the FCC adopted, a component that would enable rural carriers acquiring exchanges to receive additional support reflecting post-transaction investment made to enhance the infrastructure of and improve the service in the acquired exchanges. SVS is intended to provide support to rural carriers that make substantial investment after acquiring exchanges.[40]

As the Commission is aware, the SVS calculation, as stated above, is a subset of the HCLS, and is already limited to 50% of the difference between the support the rural carrier received from the purchased exchanges and the amount of HCLS it would otherwise receive based on its own

[40] Taken from USAC Website, www.usac.org

costs.[41] To further limit SVS by virtue of the application of capex and opex caps in the HCLS equation is nonsensical and would nullify the benefits of the program to rural customers.

IV. TRIBAL ISSUES

The *ICC/USF Order* and FNPRM profess to "ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation."[42] However, as it relates to ensuring networks that enable affordable voice and broadband service in Tribal areas, the Commission relies almost solely upon wireless technologies.[43] Beyond its proposal to allow for competitive bidding for areas in which a price cap carrier refuses to make a state-level commitment under the Commission's price cap CAF rules, Tribal areas are largely ignored as to maintaining and expanding robust, wireline-based networks.

Tribally-owned and operated carriers have undertaken the massive task of bringing quality voice and broadband services in areas that have been historically ignored by the larger price cap carriers. It is well documented that serving Tribal areas presents unique challenges[44], and Alexicon need not further expand on these issues. What is troubling about the Commission's *ICC/USF Order* and FNPRM is the apparent lack of recognition, other than in a few areas[45], of the unique challenge these carriers face. Instead, the wireline-based Tribally-owned carriers are grouped in with the rest of the RoR carriers, and like the other RoR carriers, face a reduction in support that will make meeting the Commission's lofty goals for the future of broadband in the United States an almost impossible task.

Alexicon recommends the Commission take a step back and consider further investigation regarding its treatment of Tribal areas, especially those served by Tribally-owned carriers. The NTTA and the Native Telecom Coalition for Broadband both offered concepts for addressing the unique issues Tribally-owned carriers face. Absent further discourse with Tribes and Tribally-

[41] 47 CFR 54.305(d)(3)
[42] *ICC/USF Order* at 1
[43] See *ICC/USF Order* at Section VII.E, FNPRM at Section XVII. I, and FNPRM at Section XVII. J. 4.
[44] See e.g., October 17, 2011 Ex Parte filing by the National Tribal Telecommunications Association (NTTA), the National Congress of American Indians, and Affiliated Tribes of Northwest Indians; October 18, 2011 Ex Parte Filing of NTTA; NTTA Comments (April 18, 2011)
[45] FNPRM at 1059 and 1088

owned carriers, the Commission should delay implementation of proposals that would result in harm to these areas until such time as a comprehensive, reasonable, and beneficial plan can be adopted. Alexicon would further suggest that, in accordance with the record before us showing that Tribal Nations are clearly unique and warrant special recognition to their economically-challenged areas, Tribal ILECs should be held harmless with the *ICC/USF Order* and made whole. Attachment B to these comments summarizes the financial impact that the current eight Tribal ILECs will suffer via the HCLS quantile regression implementation as well as the extension of the corporate expense limitation to Tribal ILECs.[46]

V. CONCLUSION

Alexicon believes that many of the proposals made in the FNPRM require additional analysis and comment before any further steps can be taken. As it now stands, the Commission's actions in the ICC/USF Order and in the FNPRM will only serve to threaten the stated goals of this proceeding for many RoR-regulated RLECs. It will be vital that the Commission heed the warnings of these comments, and revise its proposals regarding USF, and Intercarrier Compensation, reform before the damage becomes irreversible.

The Commission should abandon its proposed quantile regression analysis-based methodology for limiting HCLS-reimbursable capital and operating expenses, and instead should gather more evidence as to the proper statistical analysis, more meaningful independent variables, and the correct percentile to utilize. The capital and operating expense limitations should not be applied retroactively, and should not apply to ICLS or SVS.

Eliminating support in areas with 100% coverage by unsubsidized competition, if done at all, should only be accomplished through a careful investigation by the relevant state or local governmental authority. In no instance should the Commission attempt to reduce support in areas where unsubsidized competition covers less than 100% of a given RLEC's service area.

[46] See footnote 5 herein for calculation assumptions

The Commission should take a step back and reassess the negative impacts the ICC/USF Order and FNPRM will have on Tribal areas and Tribally-owned carriers, and move forward only when a reasonable solution has been found for these areas.

RESPECTFULLY SUBMITTED,

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Attachment A

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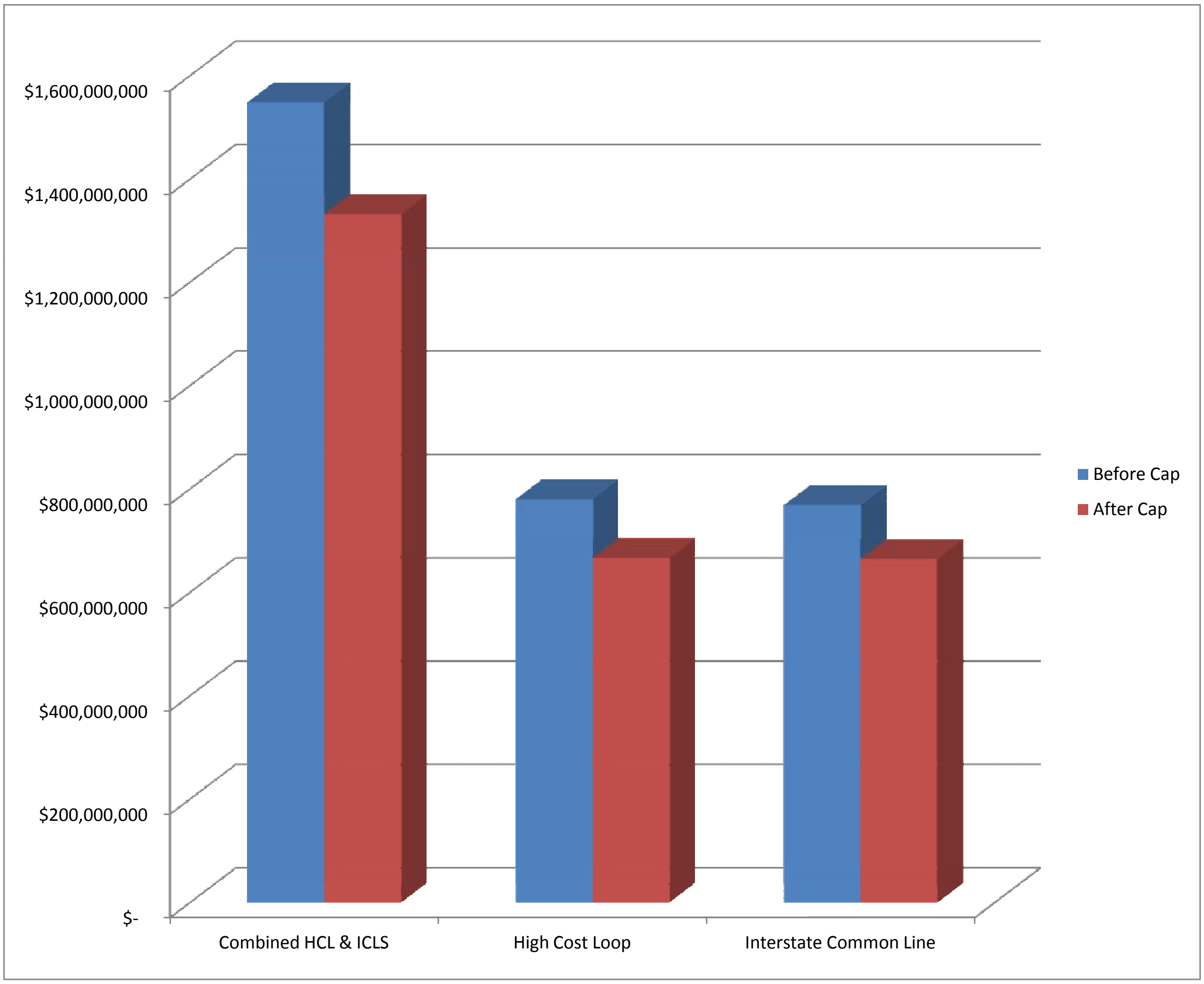
All Cost Companies

National Totals

ESTIMATED CHANGES IN HCL & ICLS

TOTAL LOOPS		**3,439,736**		
HCL without Caps (status quo Corp Ops limit)	$	779,903,652		
Reduction from 90th Quantile CapEx & OpEx Caps	$	(104,724,295)		
Change from New Corp Ops Exp Limit Calc	$	(8,236,088)		
High Cost Loop Support (capped)	**$**	**666,943,269**		
% Change		-14.5%		
Interstate Common Line Support (status quo)	$	768,559,752		
Corporate Operations Expense Limit to ICLS	$	(95,176,245)		
Reduction in Support ($250 per loop per month limit)	$	(8,939,664)		
Interstate Common Line Support (capped)	**$**	**664,443,842**		
% Change		-13.5%		
Combined HCL & ICLS			**Change ($)**	**Change (%)**
Before Caps	**$**	**1,548,463,404**		
After Caps	**$**	**1,331,387,111**	$ (217,076,292)	-14.0%

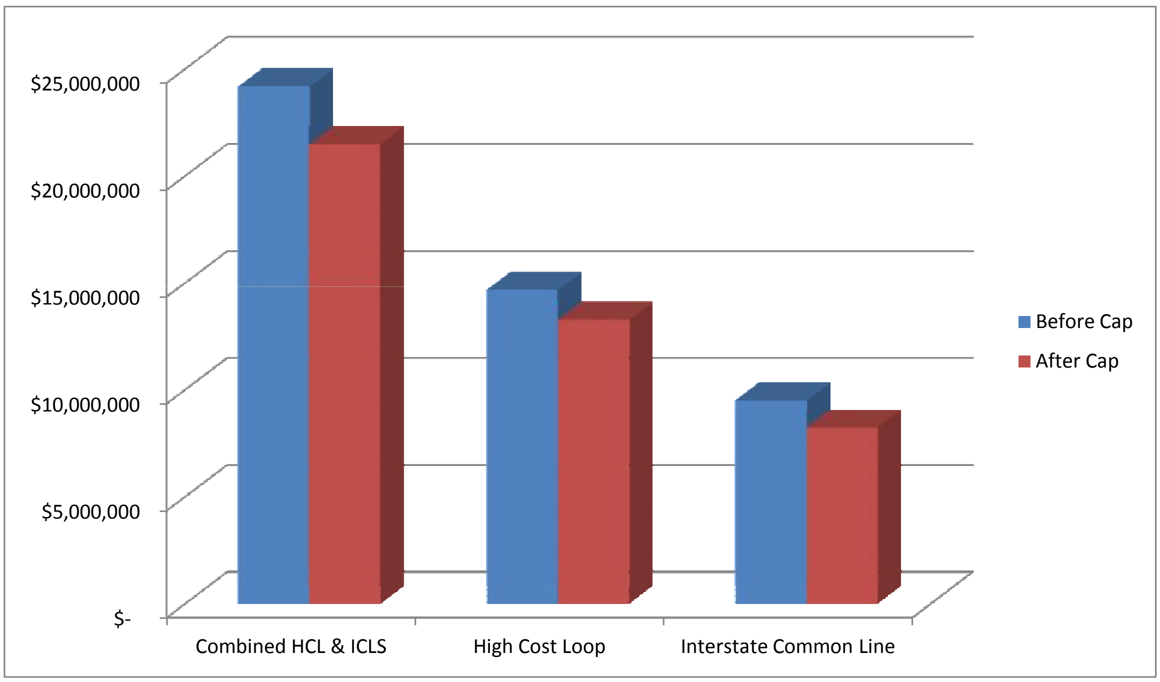


Attachment B

National Tribal Telecommunications Association
Aggregate Results

ESTIMATED CHANGES IN HCL & ICLS

TOTAL LOOPS	**18,178**		
HCL without Caps (status quo Corp Ops limit)	$ 14,680,123		
Reduction from 90th Quantile CapEx & OpEx Caps	$ (1,376,687)		
Change from New Corp Ops Exp Limit Calc	$ (22,094)		
High Cost Loop Support (capped)	**$ 13,281,341**		
% Change	-9.5%		
Interstate Common Line Support (status quo)	$ 9,498,264		
Corporate Operations Expense Limit to ICLS	$ (1,289,018)		
Reduction in Support ($250 per loop per month limit)	$ -		
Interstate Common Line Support (capped)	**$ 8,209,246**		
% Change	-13.6%		
Combined HCL & ICLS		**Change ($)**	**Change (%)**
Before Caps	**$ 24,178,387**		
After Caps	**$ 21,490,587**	$ (2,687,799)	-11.1%



SAC	SANAME	ST	Total Loops
391647	CHEYENNE RIVER SIOUX	SD	3,112
450815	HOPI TELECOMM, INC.	AZ	1,755
452169	SAN CARLOS APACHE	AZ	2,531
452173	TOHONO O'ODHAM UTIL.	AZ	3,849
452179	GILA RIVER TELECOM.	AZ	3,658
452200	FORT MOJAVE TEL, INC	AZ	1,038
457991	SADDLEBACK COMM CO	AZ	1,052
491231	MESCALERO APACHE	NM	1,183
	Total		**18,178**